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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/691,626

10/24/2003

Mark J. Verkamp

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7590

07/14/2006

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EXAMINER

A, PHI DIEU TRAN

ART UNIT

PAPER NUMBER

3637

DATE MAILED: 07/14/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/691,626

Applicant(s)

VERKAMP, MARK J.

Examiner

Phi D. A

Art Unit

3637

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-5 and 7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5,7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

***Claim Rejections - 35 USC § 102***

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by Bussey Jr. et al (6128879).

Bussey Jr. et al shows a spacer (12), the spacer comprising a strip of resilient foam, the resilient foam comprising polyethylene (col 4 line 5), the strip of foam can be formed into a roll for convenient storage and transport prior to use, the height of about ¼ inch (col 5 lines 10-11).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Bussey Jr. et al.

Bussey Jr. et al shows all the claimed limitations except for the spacer having a width of about 3 inches.

Bussey Jr. et al further discloses that the density, thickness, and width may be controlled in any suitable manner depending upon the ultimate use to which the barrier is to be placed.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Bussey Jr. et al's spacer to show the spacer having a width of about 3 inches because it would have been an obvious matter of engineering design choice to choose the spacer dimension to have a width of about 3 inches to fit a particular application as Bussey Jr. discloses that the width dimension can be changed as needed, and a change in size is generally recognized as being within the level of ordinary skill in the art, *In re Rose*, 105 USPQ 237 (CCPA 1955).

5. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith (6907701) in view of Berger (4446665).

Smith shows a method of re-roofing a roof having multiple rows of shingles (22), the method comprising the steps of positioning a first strip of resilient foam (14) atop the exposed portion of one row of asphalt shingles (22, col 4 lines 52-54), the first strip of foam having a height sufficient to project above the tops of the shingles in adjacent rows, positioning a second strip of resilient foam (14) atop the exposed portion of another row of asphalt shingles, the second strip of resilient foam having a height sufficient to project above the tops of the shingles in adjacent rows, positioning a corrugated metal panel (16) atop the first, driving a penetrating fastener through the metal panel so as to attach the metal panel to the roof (fastened thereto by a nail driving through the panel to attach to the roof).

Smith does not show the step of positioning the metal panel atop both the first and second strips.

Berger discloses positioning a roof panel (18) on first and second strips (43) to cover the strips.

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Smith's structure to show the step of positioning the metal panel atop both the first and second strips as taught by Berger because having a metal panel positioning on multiple strips at the same time would allow for the fast covering of the entire roof structure as each large piece of metal roof covers more roof space than the smaller pieces.

6. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Smith(6907701) in view of Vasquez (5471807).

Smith shows a joist (figure 1, the part supporting the roofing surface 12), a deck (12) supported by the joist, a plurality of rows of shingles (22) positioned atop the deck, a resilient spacer (14) positioned atop one of the rows of shingles and projecting above adjacent rows of shingles, a corrugated metal roof panel (16) positioned atop the spacer and separated from the rows of shingles by the spacer.

Smith does not show an underlayment between the deck and the shingles.

Vasquez shows an underlayment (14) positioned between the deck (12) and the shingles (20).

It would have been obvious to one having ordinary skill in the art at the time of the invention to modify Smith's structure to show an underlayment between the deck and the shingles as taught by Vasquez because the underlayment would provide added protection to the roof against the elements as taught by Vasquez.

***Response to Arguments***

7. Applicant's arguments with respect to claims 1-5, 7 have been considered but are moot in view of the new ground(s) of rejection.

With respect to claim 7, Smith shows the spacer positioned atop at least one of the shingles (col 4 lines 37-38, or by increasing the dimensions of the support elements 14 to fill the extra space.

***Conclusion***


The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The prior art shows roof designs.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phi D A whose telephone number is 571-272-6864. The examiner can normally be reached on Monday-Thursday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lanna Mai can be reached on 571-272-6867. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3637

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read 'Phi Dieu Tran A', with a large, stylized circular flourish at the end.

7/8/06